



United States Copyright Office

Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · www.copyright.gov

August 31, 2007

Robert S. Beiser, Esq.
Vedder, Price, Kaufman & Kammholz, P.C.
222 North LaSalle St.
Chicago, Illinois 60601

RE: CINCH DESIGN
Control No.: 61-406-4956(B)

Dear Mr. Beiser:

I am writing on behalf of the Copyright Office Review Board in response to your second request for reconsideration dated November 8, 2006. After reviewing the application from your client, Deesh Designs, Inc., and the arguments you presented on the Applicant's behalf, the Board upholds the Examining Division's refusal to register the Applicant's design for clothing entitled "CINCH Design."

ADMINISTRATIVE RECORD

On October 26, 2005, the Copyright Office received an application from Deesh Designs, Inc., to register a design for clothing, entitled CINCH Design, that included a cover letter in which you cited several cases in support of its registration. In a letter dated February 8, 2006, Visual Arts Examiner Joanna Corwin refused to register CINCH because it does not have any features separable from the functional aspects of the garment.

In a letter dated April 12, 2006, you submitted a first request for reconsideration on behalf of the Applicant in which you argued that CINCH is copyrightable. You allege that *Cosmopolitan* magazine believes CINCH is original and creative, providing Exhibit A which consists of copies of pages from *Cosmopolitan's* June 2003 issue depicting clothing. You argued that CINCH is separable from the utilitarian function of the clothing.

In a letter dated August 8, 2006, Attorney Advisor Virginia Giroux-Rollow stated that CINCH is not copyrightable because it is not separable from the utilitarian function of the clothing and, further, even if it were separable, it is not copyrightable because it is a common shape or design for clothing. Ms. Giroux-Rollow reviewed the legal basis for the separability analysis used by the Copyright Office. She discussed cases that you cited in support of registering CINCH, arguing that they are distinguishable from the facts in this case.

In a letter dated November 8, 2006, you submitted a second request for reconsideration on behalf of the Applicant in which you again argued that CINCH is copyrightable,